

## PATENT COOPERATION TREATY

## PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 519502 NJC	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/NZ2005/000069	International filing date (day/month/year) 5 April 2005	Priority date (day/month/year) 5 April 2004
International Patent Classification (IPC) or national classification and IPC Int. Cl. <i>A61B 1/313</i> (2006.01)		
Applicant FISHER & PAYKEL HEALTHCARE LIMITED et al		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXED, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of 3 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or table related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 3 February 2006	Date of completion of this report 19 July 2006	
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  PETER T. WEST Telephone No. (02) 6283 2108	

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

PCT/NZ2005/000069

## Box No. I Basis of the report

1. With regard to the language, this report is based on:

- ☒ The international application in the language in which it was filed
- ☐ A translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3(a) and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4(a))
- ☐ international preliminary examination (Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):☐ the international application as originally filed/furnished☒ the description:pages **1 to 9** as originally filed/furnished

pages\* received by this Authority on \_\_\_\_\_ with the letter of \_\_\_\_\_

pages\* received by this Authority on \_\_\_\_\_ with the letter of \_\_\_\_\_

☒ the claims:

pages \_\_\_\_\_ as originally filed/furnished

pages\* **10 to 12** as amended (together with any statement) under Article 19

pages\* received by this Authority on \_\_\_\_\_ with the letter of \_\_\_\_\_

pages\* received by this Authority on \_\_\_\_\_ with the letter of \_\_\_\_\_

☒ the drawings:pages **1 to 5** as originally filed/furnished

pages\* received by this Authority on \_\_\_\_\_ with the letter of \_\_\_\_\_

pages\* received by this Authority on \_\_\_\_\_ with the letter of \_\_\_\_\_

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to the sequence listing (*specify*): \_\_\_\_\_

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (*specify*): \_\_\_\_\_
- ☐ any table(s) related to the sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims 1 to 19	YES
	Claims	NO
Inventive step (IS)	Claims 1 to 19	YES
	Claims	NO
Industrial applicability (IA)	Claims 1 to 19	YES
	Claims	NO

## 2. Citations and explanations (Rule 70.7)

The following documents identified in the International Search Report have been considered for the purposes of this report:

D1 US 2002/0022762 A1 (BEANE et al.) 21 February 2002  
 D2 US 5,910,106 A (MORGAN et al) 8 June 1999  
 D3 US 5,651,757 A (MECKSTROTH) 29 July 1997  
 D4 US 5,549,543 A (KIM) 27 August 1996  
 D5 US 6,354,992 B1 (KATO) 12 March 2002  
 D6 US 5,351,675 A (BRODSKY) 4 October 1994  
 D7 EP 1153567 A1 (SEITZINGER et al) 14 November 2001

Novelty (N)

Claims 1 to 19 meet the criteria set forth in PCT Article 33(2) for novelty. The cited documents do not disclose a whitening element within or at the distal end of a heat conducting tube capable of receiving a distal portion of an optical instrument that enables white balancing of said optical instrument.

Inventive Step (IS)

The claimed invention is not obvious in the light of any of the cited documents nor is it disclosed in any obvious combination of them. It is also considered that it would not be obvious to a person skilled in the art in the light of common general knowledge either by itself or in combination with any of these documents.

**Box No. VIII Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claim 2 is not clear with regard to the definition "a heating element ... thermally coupled to said insulation layer" as this would appear to be of no effect. It may have been intended that the heating element be thermally coupled to the wall of the aperture.